

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

JASON C. SPALITTO,)
)
Plaintiff,)
)
vs.) **Case No. 03-4086-JAR**
)
HW DEVELOPMENT CORP., d/b/a WINGERT)
TEXACO, CITY OF OTTAWA ,KANSAS, and)
OTTAWA, KANSAS POLICE DEPARTMENT,)
)
Defendants.)
)

This case comes before the Court on plaintiff's motion for a determination of place of trial (Doc. 6), seeking a determination that the trial of this case be held in Kansas City, Kansas. This action was originally filed in Franklin County District Court, and the defendants removed the action to this court, designating Topeka, Kansas as the place of trial.¹ Plaintiff requests that the trial be held in Kansas City, Kansas rather than Topeka, because "[t]he location of the witnesses, the attorneys and the location of the event which is the subject of this action make Kansas City, Kansas a more appropriate location for the trial of this case." For the reasons set forth below, the Court denies plaintiff's motion.

¹See D. Kan. R. 40.2 (“The removing party, at the time of filing the notice of removal . . . shall also file a designation of place of trial.”).

but may, upon motion by a party, or in its discretion determine the place of trial.”² When considering requests for intra-district transfer, the court looks to the factors relevant to change of venue motions pursuant to 28 U.S.C. § 1404(a).³ While, on its face, § 1404 appears inapplicable as Kansas constitutes only one judicial district and division, § 1404(c) provides that “[a] district court may order any civil action to be tried at any place within the division in which it is pending.”⁴ However, cases are generally not transferred between cities except for the most compelling reasons.⁵

This Court begins its analysis with Local Rule 81.1 which states that any action brought in Franklin County Kansas, upon notice of removal, shall be filed in the United States District Court in Topeka.⁶ Thus, pursuant to Rule 81.1(b), there is a presumption toward retaining Topeka as the trial location as the original action was commenced in Franklin County District Court.⁷

Turning to the § 1404(a) analysis, a district court should consider the plaintiff’s choice of forum, the convenience for witnesses, the accessibility of witnesses and other sources of proof, the possibility of obtaining a fair trial, difficulties that may arise from congested dockets, and “all

²D. Kan. R. 40.2.

³*Lavin v. The Lithibar Co.*, No. 01-2174-JWL, 2001 WL 1175096, at *1 (D. Kan. Sept. 19, 2001); *Wiggans v. Hartford Life & Accident Ins. Co.*, No. 02-2080-JWL, 2002 WL 731701, at *2 (D. Kan. Apr. 15, 2002).

⁴*Lavin*, 2001 WL 1175096, at *1 n.1.

⁵*See, e.g., Scheidt v. Klein*, 956 F.2d 963, 965 (10th Cir. 1992).

⁶*See* D. Kan. R. 81.1(b).

⁷*Wiggans*, 2002 WL 731701, at *1 (citing *Cache, Inc. v. Scitech Med. Prods.*, No. 89-4028-R, 1990 WL 41407, at *2 (D. Kan. Mar. 19, 1990)).

other considerations of a practical nature that make a trial easy, expeditious and economical.”⁸

The burden of proving that the existing forum is inconvenient lies with the moving party.⁹

The plaintiff has not met the burden of proving that Topeka is an inconvenient site for trial. Plaintiff has failed to provide the Court with a list of witnesses whose location would make the drive to Topeka inconvenient. Plaintiff alleges that his attorney is located in Kansas City, Missouri; Plaintiff Jason Spalitto resides in Overland Park, Kansas; the attorney for defendants City of Ottawa, Kansas and the Ottawa, Kansas Police Department is located in Overland Park, Kansas; and the event which is the subject of this action occurred in Ottawa, Kansas, which is not substantially closer to either location. A transfer to Kansas City would result in inefficiency and delay. There would be increased delay in terms of fitting this trial into the calendar in Kansas City, which is as busy as Topeka’s. While the difference in convenience between traveling to Topeka as opposed to Kansas City is minimal for the plaintiff and the attorneys, considering the totality of the factors examined under § 1404(a), the Court concludes that the plaintiff’s request to move the trial to Kansas City, Kansas is denied.

IT IS THEREFORE ORDERED that plaintiff’s motion for determination of place of trial (Doc. 6) is DENIED.

IT IS SO ORDERED.

Dated this 6th day of June, 2003.

S/ Julie A. Robinson
Julie A. Robinson
United States District Judge

⁸*Chrysler Credit Corp. v. Country Chrysler, Inc.*, 928 F.2d 1509, 1515–16 (10th Cir. 1991) (citing *Texas Gulf Sulphur Co. v. Ritter*, 371 F.2d 145, 147 (10th Cir. 1957)).

⁹*Scheidt*, 956 F.2d at 965 (citing *Chrysler Credit Corp.*, 928 F.2d at 1515).